

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Charles W. Penland, Sr. and Mary
Penland,

Plaintiff,

vs.

County of Spartanburg, South Carolina;
State of South Carolina; South Carolina
Department of Revenue; Jerry Saad,
Court Appointed Receiver; and RMC
Office of Spartanburg County,
South Carolina,

Defendants.

C.A. No. 6:07-3288-HMH

OPINION & ORDER

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit.

The Plaintiffs filed the instant case on October 2, 2007, alleging that the Defendants illegally took 4.5 acres of their property located in Greer, South Carolina, for a right-of-way for Highway 101 without notice and without giving them just compensation. This case was originally assigned to United States District Judge Henry F. Floyd, Jr. On October 25, 2007, Magistrate Judge William M. Catoe entered a Report and Recommendation recommending denying the Plaintiffs' motion to stay, dismissing the case without prejudice, and considering the action a strike against Charles W. Penland, Sr., pursuant to 28 U.S.C. § 1915(g). The Plaintiffs filed objections to the Report and Recommendation on November 7, 2007.

On November 15, 2007, Judge Floyd entered an order adopting the Report and Recommendation of the Magistrate Judge, denying the Plaintiffs' motion to stay, dismissing the case without prejudice and without issuance and service of process, and deeming the action a

strike against Charles W. Penland, Sr., pursuant to § 1915(g) (“November Order”). Judgment was entered on the same day.

The Plaintiffs filed a notice of appeal of the November Order on November 27, 2007. The Fourth Circuit remanded the instant case on July 14, 2008, for further proceedings without making any substantive ruling on the Plaintiffs’ appeal. On July 22, 2008, the case was re-assigned to United States District Judge Henry M. Herlong, Jr. The Fourth Circuit’s mandate issued on August 4, 2008.

After review of the Report and Recommendation and the November Order, and for the reasons set forth therein, the court agrees with Judge Floyd’s November Order adopting the Report and Recommendation of the Magistrate Judge, dismissing the instant case without prejudice and without issuance and service of process, and deeming the action a strike against Charles W. Penland, Sr., pursuant to § 1915(g).

It is therefore

ORDERED that the Plaintiffs’ complaint is dismissed without prejudice and without issuance and service of process. It is further

ORDERED that this action is deemed a strike against Charles W. Penland, Sr., pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
August 12, 2008

NOTICE OF RIGHT TO APPEAL

The Plaintiffs are hereby notified that they have the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.